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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF DENTISTRY
DOCKET NO.

In the Matter of the Suspension)	
or Revocation of the License of)	Administrative Action
CHARLES ZEBE, D.M.D.)	
To Practice Dentistry in the)	FINAL DECISION
State of New Jersey)	AND
	ORDER

This matter was opened to the New Jersey State Board of Dentistry (hereinafter "Board") on August 24, 1989, by a Uniform Penalty Letter which alleged that Dr. Zebe violated N.J.A.C. 13:30-8.6(g) in that he offered a free service in an advertisement without indicating a fixed or stated range of fees. On or about September 8, 1989, Dr. Zebe filed a letter response to the Uniform Penalty Letter and requested a hearing on the allegations.

A hearing was held on December 6, 1989. Deputy Attorney General Vicki A. Mangiaracina appeared on behalf of the complainant, and Americo J. DeNoia, Jr., Esq., appeared on behalf of Dr. Zebe.

The following exhibits were admitted into evidence by Deputy Attorney General Mangiaracina with the consent of Mr. DeNoia:

- S-1 Patient letter of complaint dated April 14, 1989, submitted by David D. Walker with attached copy of the advertisement in issue.
- S-2 Letter response of Dr. Zebe dated September 8, 1989.

S-3 Letter of Mr. DeNoia dated November 22, 1989, with attachments consisting of photocopies of many coupons apparently redeemed by various patients of Dr. Zebe.

S-4 Uniform Penalty Letter dated August 24, 1989.

DISCUSSION OF THE CASE

The advertisement in question was brought to the attention of the Board by David D. Walker, a patient who made an appointment with Dr. Zebe on the basis of an advertisement in the Trenton Area New Jersey Bell Yellow Pages which offered, among other things, a "Free Initial Consultation". Mr. Walker stated in his letter that he was interested in consulting a dentist about cosmetic bonding. He specifically made an appointment with Dr. Zebe on the basis of the advertisement which offered a free initial consultation. On the day of the appointment Mr. Walker met with Dr. Zebe who explained the different types of bonding materials, examined his mouth to determine whether bonding was appropriate, and provided him with an estimate for the cost per tooth for the bonding treatment. As he was walking out of the office, Dr. Zebe's receptionist advised Mr. Walker that he owed a fee in the amount of Thirteen (\$13.00) Dollars for the examination. Mr. Walker further stated that although he did not feel the Thirteen (\$13.00) Dollars was a great deal of money, he felt that he had been induced to make an appointment with Dr. Zebe on the strength of the offer of a free initial consultation.

The Uniform Penalty Letter dated August 24, 1989, alleged a violation of N.J.A.C. 13:30-8.6(g) which states in pertinent part:

"Offers of discounts or fee reductions or free services shall indicate the advertiser's fixed or stated range of fees against which said discount is to be made and/or the value of the free service.

1. The fixed or stated range of fees or value of free service shall mean and be established on the basis of the advertiser's most commonly charged fee for the stated service within the most recent 60 days prior to, or to be charged in the first 60 days following, the effective date of the advertisement."

The Uniform Penalty Letter offered Dr. Zebe the opportunity to settle the matter by paying a civil penalty in the amount of Two Hundred and Fifty (\$250.00) Dollars and making restitution to Mr. Walker in the amount of Thirteen (\$13.00) Dollars.

Dr. Zebe testified in his own behalf at the hearing. He stated that the offer of a free initial consultation set forth in his advertisement is true by virtue of the fact that he never charges for an initial consultation for new patients. Since he never charges for this specific service, he did not feel that he should set forth the value of that service. Dr. Zebe testified that a free initial consultation can mean many things, but it generally takes the form of a second opinion, a discussion of potential treatment, a review of X-rays brought in by the patient,

a discussion of fees, but it does not include a patient examination or new X-rays. Dr. Zebe indicated that if an examination and/or X-rays would enhance the consultation, the patient is advised that there is an additional charge for these services.

The advertisement also states: "See our coupon".

Dr. Zebe submitted numerous copies of this coupon which had been redeemed by new patients. The coupon states: "FREE CONSULTATION, FREE EXAMINATION, FREE X-RAY FOR NEW PATIENTS - \$20 VALUE".

Dr. Zebe testified that almost all new patients who come in for the initial consultation bring this coupon so that the issue of whether or not they need to pay an additional fee for the examination or X-ray does not arise. Almost all coupon patients receive an examination in conjunction with the initial consultation. Patients who come into the office for an initial consultation without a coupon are advised in advance that they may be charged an extra fee for an examination and/or X-rays. Mr. Walker, on the other hand, claims that he was not advised of the additional charge until he was leaving the office.

Dr. Zebe explained that when a patient comes into the office for an initial consultation, he or she is seated in a dental chair in the operatory and is usually draped with a bib. Although Dr. Zebe does not know in advance whether or not an examination or X-ray will enhance the initial consultation, he feels that having the patient prepared for an examination in advance will save time for all parties. Dr. Zebe further

testified that a consultation without an examination only occurs about ten percent to twenty percent of the time. Most patients come in with a coupon and, therefore, are entitled to an examination and an X-ray without a fee.

Dr. Zebe further advised the Board that the advertisement was suggested and designed by a sales agent of New Jersey Bell Telephone Co. He noted that other advertisements in the Yellow Pages contained the same type of wording. He consulted with New Jersey Bell representatives after he received the Uniform Penalty Letter, and New Jersey Bell advised Dr. Zebe that it did not see a problem with this type of advertisement.

Subsequent to closing arguments made by Deputy Attorney General Mangiaracina and Mr. DeNoia, the Board conducted its deliberations in Executive Session on December 6, 1989. On consideration of the record herein, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Charles Zebe, D.M.D., is a licensed dentist in the State of New Jersey and has been a licensee during all times pertinent hereto.

2. Dr. Zebe caused an advertisement to be placed in the Trenton Area New Jersey Bell Yellow Pages which offered a "Free Initial Consultation". The advertisement did not indicate Dr. Zebe's fixed or stated range of fees or the value of the free service.

3. David D. Walker read the advertisement in question and made an appointment with Dr. Zebe for an initial consultation on the basis of the advertisement's offer of a free initial consultation.

4. The advertisement does not state that the free initial consultation does not include a patient examination and/or X-rays.

5. Mr. Walker paid a fee to Dr. Zebe for the examination in the amount of Thirteen (\$13.00) Dollars.

CONCLUSIONS OF LAW

As a preliminary matter, the Board rejects in its entirety the suggestion that Dr. Zebe could reasonably rely on the judgment of a sales representative from New Jersey Bell Telephone advertising. N.J.A.C. 13:30-8.6(i) provides as follows:

"A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his benefit an intermediary source or other agent in the course of advertising shall be personally responsible for the form and contents of said advertisement."

The Board further finds that the use of the word "free" in an advertisement communicates to the potential patient that a service for which there is normally a cost or fee may be obtained at no cost or fee. Such offers also imply that the free service may be available for a limited time only. In view of the fact that

Dr. Zebe would charge for a consultation in a case that was not an initial consultation for a new patient, the service has a value that could be set forth in the advertisement.

Accordingly, the Board makes the following Conclusions of Law:

1. Dr. Zebe violated N.J.A.C. 13:30-8.6(g) in that he caused an advertisement to be placed in the New Jersey Bell Yellow Pages which offered a free service without indicating a fixed or stated range of fees or the value of the free service.

2. The Board further concludes that the advertisement was misleading, and it concealed a material fact in that the offer of a free initial consultation in the advertisement failed to disclose that the service did not include an examination or X-ray.

3. The misleading aspect of the advertisement and the failure to disclose that additional fees could be charged caused David Walker to select Dr. Zebe from among the many telephone book advertisers, and he, in fact, incurred a fee in the amount of Thirteen (\$13.00) Dollars for an initial examination.

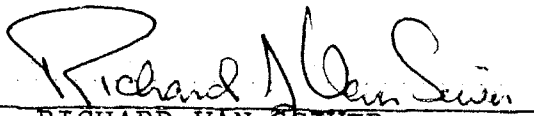
IT IS, THEREFORE, ON THIS 21st DAY OF DECEMBER , 1989,
ORDERED THAT:

1. Dr. Zebe is hereby assessed a civil penalty in the amount of Two Hundred and Fifty (\$250.00) Dollars. This civil penalty shall be made payable to the State of New Jersey and submitted to William Gutman, Executive Director of the Board of Dentistry, at 1100 Raymond Boulevard, Room 510, Newark, New Jersey 07102

within fifteen (15) days of the entry date of this Order.

2. Dr. Zebe shall make restitution to David Walker by submitting to Mr. Gutman at the above address a certified check made payable to David Walker in the amount of Thirteen (\$13.00) Dollars, within fifteen (15) days of the entry date of this Order.

3. Dr. Zebe shall cease and desist from offering a "Free Initial Consultation" in his advertisements unless he shall indicate the value of the free service and/or disclose that additional charges may be incurred for an examination and X-rays.


RICHARD VAN SCIVER
VICE-PRESIDENT
STATE BOARD OF DENTISTRY